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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-827*

13 **GARY MORRIS ABRAHAMS**
6377 Myra Avenue
14 Buena Park, CA 90620

A C C U S A T I O N

15 **Registered Nurse License No. 541061**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 2, 1998, the Board of Registered Nursing issued Registered Nurse
24 License Number 541061 to Gary Morris Abrahams (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 August 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10

11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of
13 the conviction shall be conclusive evidence thereof.

14

15 10. Section 2762 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the meaning
17 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
18 licensed under this chapter to do any of the following:

19

20 (b) Use any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
22 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
23 dangerous or injurious to himself or herself, any other person, or the public or to the
24 extent that such use impairs his or her ability to conduct with safety to the public the
25 practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription, consumption,
27 or self-administration of any of the substances described in subdivisions (a) and (b) of
28 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

. . . .

11. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere
made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the

1 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
2 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

3 REGULATORY PROVISIONS

4 12. California Code of Regulations, title 16, section 1444, states:

5 A conviction or act shall be considered to be substantially related to the
6 qualifications, functions or duties of a registered nurse if to a substantial degree it
7 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

8 (a) Assaultive or abusive conduct including, but not limited to, those violations
9 listed in subdivision (d) of Penal Code Section 11160.

10 (b) Failure to comply with any mandatory reporting requirements.

11 (c) Theft, dishonesty, fraud, or deceit.

12 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

13 13. California Code of Regulations, title 16, section 1445 states:

14

15 (b) When considering the suspension or revocation of a license on the grounds
16 that a registered nurse has been convicted of a crime, the board, in evaluating the
17 rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

18 (1) Nature and severity of the act(s) or offense(s).

19 (2) Total criminal record.

20 (3) The time that has elapsed since commission of the act(s) or offense(s).

21 (4) Whether the licensee has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

22 (5) If applicable, evidence of expungement proceedings pursuant to Section
23 1203.4 of the Penal Code.

24 (6) Evidence, if any, of rehabilitation submitted by the licensee.

25 COSTS

26 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(July 19, 2012 Criminal Conviction for Disturbing the Peace on May 5, 2012)**

6 15. Respondent has subjected his license to disciplinary action under sections 490 and
7 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
8 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
9 follows:

10 a. On or about July 19, 2012, in a criminal proceeding entitled *People of the State*
11 *of California v. Gary Morris Abrahams*, in Los Angeles County Superior Court, case number
12 2LG01416, Respondent was convicted on his plea of nolo contendere of violating Penal Code
13 section 415(2), disturbing the peace, a misdemeanor, a count added to the complaint by
14 interlineation, which dismissed the original misdemeanor charges of battery on a peace officer/
15 firefighter (Pen. Code, § 243, subd. (b)), and public intoxication (Pen. Code, § 647, subd. (f)).

16 b. As a result of the conviction, on or about July 19, 2012, Respondent was placed
17 on summary probation for three years, and ordered to perform 15 days in the community service
18 work program, pay fines, fees, and restitution, and comply with probation terms.

19 c. The facts that led to the conviction are that on or about the evening of May 5,
20 2012, a patrol officer with the Long Beach Police Department responded to an incident call.
21 According to statements made by the on scene fire captain for the Long Beach Fire Department,
22 his engine company had been dispatched to the scene to assist Respondent. Respondent told the
23 fire fighters that he had been in a fight and ignored their attempts to treat his injuries. Fearing for
24 his safety, two fire fighters approached Respondent. Respondent became agitated and started to
25 struggle, and all three fell to the ground. Respondent's head hit the ground and his existing head
26 injury began bleeding faster. Respondent eventually calmed down and allowed the paramedics to
27 treat his injuries until the police arrived. Upon arrival, the officer saw fire personnel treating
28 Respondent, who was sitting in the street. Respondent had a wound to his head which was

1 bleeding profusely, and had dried blood on his face and clothing. Near Respondent was a puddle
2 of blood approximately one foot in diameter. Respondent told the officer that the Long Beach
3 Fire Department tackled him for no reason. Respondent had bloodshot, watery eyes, slurred
4 speech, and the odor of an alcoholic beverage on his breath. Respondent was escorted from the
5 middle of the street to sit on a curb. Respondent became agitated, stood up, and took a swing at
6 one of the firefighters. Respondent ran off, and was chased and surrounded by three firefighters
7 and a police officer. Respondent took a fighting stance with his arms raised towards a firefighter,
8 but he was subdued with an electronic control device (ECD) deployed by the police officer.
9 Respondent refused to comply with the officer's orders and was given another cycle of the ECD.
10 Respondent eventually complied and was taken to a nearby hospital for treatment. At the
11 hospital, Respondent refused to provide a blood sample and refused treatment. After several
12 hours, Respondent agreed to treatment. A family member told the officers that Respondent had
13 been at a wedding nearby, became very intoxicated, and got into a fight in a parking lot after
14 someone demanded his car keys.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 16. Respondent has subjected his registered nurse license to disciplinary action under
18 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about May 5,
19 2012, as described in paragraph 15, above, Respondent used alcoholic beverages to an extent or
20 in a manner that was dangerous and injurious to himself and to others.

21 **DISCIPLINARY CONSIDERATIONS**

22 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
23 to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges the
24 following:

25 18. On or about January 5, 1995, in a criminal proceeding entitled *People of the State of*
26 *California v. Gary Morris Abrahams*, in Los Angeles County Municipal Court, case number
27 94M06800, Respondent was convicted on his plea of guilty of violating Penal Code section
28 602.5, unauthorized entry of property, a misdemeanor, a count added to the complaint by

1 interlineation as part of his plea agreement, which dismissed the original charge of battery (Pen.
2 Code, § 242). Respondent was granted summary probation for one year, and ordered to complete
3 40 hours of community service, pay fees and fines, and comply with probation terms.

4 19. On or about November 17, 1994, in a criminal proceeding entitled *People of the State*
5 *of California v. Gary Morris Abrahams*, in Los Angeles County Municipal Court, case number
6 X55040, Respondent was convicted on his plea of guilty of violating Long Beach Municipal
7 Code 9.22.010, public consumption/transportation of alcohol, a misdemeanor. Respondent was
8 ordered to serve three days in the Los Angeles County Jail with credit for three days.

9 **PRAYER**

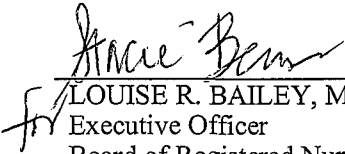
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 541061, issued to Gary
13 Morris Abrahams;

14 2. Ordering Gary Morris Abrahams to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.
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19

20 DATED: March 26, 2013

21 
22 LOUISE R. BAILEY, M.ED., RN
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

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